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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In re Applications of	)	MM DOCKET NO. 93-94
	)	
SCRIPPS HOWARD BROADCASTING COMPANY	)	File No. BRCT-910603KX
	)	
For Renewal of License of Station WMAR-TV	)	
Baltimore, Maryland	)	
	)	
and	)	
	)	
FOUR JACKS BROADCASTING, INC.	)	File No. BPCT-910903KE
	)	
For a Construction Permit for a New	)	
Television Facility on Channel 2	)	
at Baltimore, Maryland	)	

MEMORANDUM OPINION AND ORDER

Issued: May 13, 1994 ; Released: May 16, 1994

1. This is a ruling on an Opposition To Notice Of Depositions that was filed on May 3, 1994, by Four Jacks Broadcasting, Inc. ("Four Jacks"). A Response To Notice Of Depositions was filed on May 11, 1994, by Scripps Howard Broadcasting Company ("Scripps Howard").<sup>1</sup> The initial Notice Of Depositions had been filed by Scripps Howard on April 26, 1994.

2. Scripps Howard seeks to depose three identified attorneys who had performed legal services for Four Jacks at the Securities and Exchange Commission ("SEC").<sup>2</sup> Scripps Howard also seeks to notice the possible depositions of any other persons who assisted in the drafting or preparation of filings at the SEC which described the relationships of the principals of Four Jacks to Sinclair Broadcast Group, Inc. ("Sinclair"). The Notice states that the purpose for the depositions is to discover "admissible evidence relating to the pending misrepresentation/lack of candor issue pending against Four Jacks."

3. Four Jacks opposes the depositions on grounds that Scripps Howard should have raised the question of these depositions at a prehearing conference that was held on February 11, 1994, and that it is now too late for

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<sup>1</sup> The Presiding Judge ordered that Scripps Howard file its responsive pleading in a shorter time than is provided for under the Commission's rules. See 47 C.F.R. §1.315(b)(2) (response to be filed within 14 days of service of an opposition to the taking of a deposition). Scripps Howard has complied.

<sup>2</sup> In its opposition, Four Jacks describes the three identified attorneys as the corporate counsel for Sinclair, the securities counsel to Sinclair, and the securities counsel to the underwriter.

such discovery. Four Jacks also notes that the Presiding Judge had earlier alerted counsel that he would apply a strict standard and require a showing of substantial need for such discovery. See Memorandum Opinion and Order, FCC 94M-310, released May 2, 1994 at n.5. Four Jacks also argues that it would be unfair to permit the depositions of its counsel when the Presiding Judge has precluded the depositions of Scripps Howard's attorneys.<sup>3</sup> Four Jacks also notes that the attorneys sought to be deposed were those who had merely prepared the documents to which the Four Jacks' principals had certified. Finally, Four Jacks notes that complicated issues of privilege would arise if the depositions are allowed.

4. In its Response, Scripps Howard summarizes the theory of the misrepresentation/ lack of candor issue and the apparent contradictions in the filings at the Commission and at the SEC. Scripps Howard asserts that proof of intent to deceive is the objective of the depositions. However, there is no showing made by Scripps Howard that the depositions of the attorneys would probably lead to evidence that would disclose the intent of the principals of Four Jacks. Therefore, the evidence that would be expected would merely corroborate evidence in the record and that would be a waste of time. See FRE 403.

5. The deposition discovery of the attorneys for Four Jacks will be denied as speculative. Scripps Howard holds out no more than a hope that some substantial evidence may be uncovered through the deposing of agents of the principals. The agents are the persons who are relied on by the principals for interpreting the disclosure requirements of the federal securities laws and for writing the disclosure for Sinclair that accords with the law. But the attorneys are describing the facts as they are received from the principals. If the attorneys were not given all of the facts, that will not advance this case. Also, in order to obtain the evidence it will be necessary for attorney-client communications to be divulged which is a situation that the Presiding Judge has sought to avoid, even where Scripps Howard is concerned. See Memorandum Opinion and Order, FCC 94M-331, released May 13, 1994. Unless there were some showing of a probability that the attorneys were participating in a conspiracy to intentionally mislead the Commission, there is no ground to use the fraud exception to the attorney-client privilege to permit the depositions of these attorneys. See Raveesh K. Kumra, 5 F.C.C. Rcd 5607 (Review Bd 1990) at Para.11 and cases cited therein. Also, in light of the closeness of this case to a hearing, it is not practical to permit speculative discovery.

#### Ruling

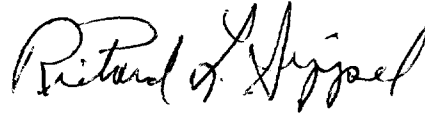
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<sup>3</sup> There must be a distinction noted. The depositions that were sought by Four Jacks were the depositions of the trial attorneys representing Scripps Howard in this case. If their depositions and/or hearing testimony were required, the case could be expanded by a disqualification motion and related hardship on client issue. See D.C. Rules of Professional Conduct 3-7 (1990). However, the depositions that are sought by Scripps Howard are those of attorneys who were involved only with the SEC filings of Sinclair. Therefore, those attorney depositions would not disqualify Four Jack's trial attorneys.

Ruling

Accordingly, IT IS ORDERED that the Depositions of attorneys for Four Jacks Broadcasting, Inc. that were noticed by Scripps Howard Broadcasting Company on April 26, 1994, SHALL NOT BE TAKEN.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, reading "Richard L. Sippel".

Richard L. Sippel  
Administrative Law Judge